

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 21, 2007

**GUADALUPE ARROYO v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Knox County**  
**No. 84012     Ray L. Jenkins, Judge**

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**No. E2006-01037-CCA-R3-PC - Filed October 29, 2007**

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The Appellant, Guadalupe Arroyo, appeals the Knox County Criminal Court's summary dismissal of his *pro se* petition for post-conviction relief upon the ground that it was time-barred. On appeal, Arroyo contends that his petition was timely filed because it was delivered to prison authorities within the limitations period. The State concedes that the petition was timely filed but, nonetheless, argues that the petition was properly dismissed because it failed to allege any facts supporting Arroyo's ineffectiveness claim. Following review, we agree that the petition should not have been dismissed as time-barred. Moreover, we must reject the State's argument to affirm the dismissal on other grounds, despite the fact that no supporting facts are included in the petition. Instead, the case is remanded to the post-conviction court to consider, pursuant to the discretionary provision of Tennessee Code Annotated section 40-30-106(d), whether Arroyo should be allowed to amend his *pro se* petition.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Reversed and Remanded**

DAVID G. HAYES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Guadalupe Arroyo, *Pro se*, Whiteville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; and Randall E. Nichols, District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Procedural History**

On January 22, 2002, the Appellant entered "blind" guilty pleas to two counts of vehicular homicide by intoxication. *State v. Guadalupe Arroyo, Alias*, No. E2002-00639-CCA-R3-CD (Tenn. Crim. App. at Knoxville, Mar. 27, 2003). The charges resulted from an October 31, 2000 traffic accident, during which the Appellant, whose blood alcohol level was .18 percent, ran a red light and

struck another vehicle, resulting in two deaths. *Id.* Following a sentencing hearing, the trial court sentenced the Appellant, as a Range I offender, to consecutive twelve-year sentences of incarceration. *Id.* On appeal, this court affirmed the convictions but remanded the case for a new sentencing hearing. *Id.* On remand, the trial court again imposed an effective twenty-four year sentence. *State v. Guadalupe Arroyo*, No. E2003-02355-CCA-R3-CD (Tenn. Crim. App. at Knoxville, Aug. 30, 2004). On the Appellant's second appeal, this court again remanded the case for resentencing and findings to support the imposition of consecutive sentencing. *Id.* On February 24, 2005, the trial court entered an order setting forth its reasons justifying consecutive sentencing. No appeal was taken.

On April 4, 2006, a *pro se* post-conviction petition was filed alleging ineffective assistance of counsel. However, the petition clearly reflects that the Appellant submitted the petition to prison authorities on March 27, 2006. Nonetheless, the post-conviction court entered an order summarily dismissing the petition after finding that it was barred by the one-year statute of limitations. This timely appeal followed.

### Analysis

On appeal, the Appellant contends that the post-conviction court erred in summarily dismissing the petition as time-barred because he delivered the petition to prison authorities within the appropriate time, and the State concedes that the petition was timely filed. Nonetheless, the State urges this court to affirm the dismissal upon grounds that the Appellant failed to allege any facts in the petition to support the ineffectiveness claim.

Pursuant to Tennessee Code Annotated section 40-30-102, a person in custody "must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which the judgment became final, or consideration of the petition shall be barred." T.C.A. § 40-30-102(a) (2006). Notwithstanding, if petitions are "prepared by or filed on behalf of a *pro se* petitioner incarcerated in a correctional facility and are not received by the clerk of the court until after the time fixed for filing, filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing." Tenn. Sup. Ct. R. 28, § 2(G); *see also* Tenn. R. Crim. P. 49(d). In effect, "the jailer is . . . the clerk of the [court.]" *Paul v. State*, 75 S.W.3d 926, 929 (Tenn. Crim. App. 2001) (citing *Houston v. Lack*, 487 U.S. 266, 270, 108 S. Ct. 2379, 2383 (1988)).

On February 24, 2005, the trial court entered its final sentencing order in this case. Because no appeal was taken, the judgment became final on March 26, 2005, and the Appellant had one year from that date to file for post-conviction relief. *See Allen Oliver v. State*, No. W2002-02085-CCA-R3-PC (Tenn. Crim. App. at Jackson, May 16, 2003) (citing *State v. Green*, 106 S.W.3d 646 (Tenn. 2003)). Furthermore, because the final date for filing fell on a weekend, the time for filing was extended to the following Monday, March 27th. *See* Tenn. R. Crim. P. 45(a). The record before us reflects that the Appellant's petition was filed stamped in the court on April 4, 2006. Nonetheless, the petition clearly reflects that the Appellant delivered his *pro se* petition to prison authorities on

Monday, March 27, 2006. Thus, the Appellant is correct that his petition was timely filed and should not have been dismissed by the post-conviction court on that ground.

Although the State concedes error in the dismissal of the petition, it now, nonetheless, urges this court to affirm the dismissal upon the ground that the Appellant failed to allege any facts supporting the ineffectiveness claim asserted in his petition. In support of their argument for affirmance upon this ground, the State relies upon the requirements of our post-conviction statute, which mandates that a petition for relief

. . . must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition. If, however, the petition was filed *pro se*, the judge may enter an order stating that the petitioner must file an amended petition that complies with this section within fifteen (15) days or the petition will be dismissed.

T.C.A. § 40-30-106(d) (2006). Additionally, our code provides that “the petitioner shall include allegations of fact supporting each claim for relief set forth in the petition[.]” T.C.A. § 40-30-104(e) (2006).

Review of the record before us reveals that the Appellant filed his petition for post-conviction relief on the standardized form provided by the State of Tennessee. This form contains a list of several specific claims for relief, which are to be checked by a petitioner if they are applicable to his case. Though the form provides this generic list of grounds, it also contains clear instruction that specific facts should be included to support the asserted ground or grounds. In this case, the Appellant merely checked the box beside the ineffective assistance of counsel ground. He included no facts whatsoever in support of his claim.

We note initially that the State has previously raised this issue in a motion for affirmance pursuant to Tenn. Ct. Crim. App. R. 20. This court, however, denied the motion, concluding that “we cannot summarily affirm the order of dismissal when the only basis for the trial court’s ruling was its erroneous finding that the petition was statutorily time-barred even if, as the [S]tate suggests, other grounds supporting dismissal exist.” *Guadalupe Arroyo v. State*, No. E2006-01037-CCA-R3-PC (Tenn. Crim. App. at Knoxville, June 5, 2007).

While we agree with the State that the Appellant’s petition fails to include any facts supporting his ineffectiveness claim, we cannot agree that affirmance is the proper course of action. If the post-conviction court had dismissed the petition upon grounds that it failed to allege necessary facts, we would affirm the decision because the petition as submitted is completely bare of any supporting facts. The Appellant has provided nothing more than “bare allegation[s] that a constitutional right has been violated and mere conclusions of law,” which are not “sufficient to

warrant any further proceedings.” *See Burnett v. State*, 92 S.W.3d 403, 406 (Tenn. 2002) (citing T.C.A. § 40-30-206(d)).

However, the post-conviction court in this case dismissed the petition solely upon the ground that it was time-barred. In contrast to *Beard v. State*, which the State relies upon, the record in this case fails to indicate that the post-conviction court considered the facts and allegations, or lack thereof, presented in the petition. *See Edward Beard v. State*, No. W2004-00627-CCA-R3-PC (Tenn. Crim. App. at Jackson, Mar. 23, 2005). The State also urges us to rely upon the fact that the court’s determination of whether to allow a petitioner to amend a petition which fails to state a claim pursuant to section 40-30-106 is discretionary. We agree with the State that the decision is a discretionary one. However, it is clearly a decision which should be considered and made by the post-conviction court. Moreover, for this court to dismiss upon grounds that were never considered by the post-conviction court would implicate fact-finding authority, which this court does not possess as our jurisdiction is appellate only. *See* T.C.A. § 16-5-108 (2003). Accordingly, we must reverse the post-conviction court’s dismissal of the petition and remand the case for consideration in light of this opinion.

### CONCLUSION

Based upon the foregoing, the Knox County Criminal Court’s summary dismissal of the Appellant’s petition is reversed. The case is remanded to the post-conviction court for consideration in light of this opinion.

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DAVID G. HAYES, JUDGE